

CONTRACT #13
RFS # 337.07-091

**Department of Labor &
Workforce Development**

VENDOR:
ACT, Inc.



**STATE OF TENNESSEE
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT**

**PHIL BREDESEN
GOVERNOR**

**Andrew Johnson Tower
710 James Robertson Pkwy, 8th FLOOR
Nashville, TN 37243-0655
(615) 741-2582**

**JAMES G. NEELEY
COMMISSIONER**

August 14, 2007

M. D. Goetz, Jr., Commissioner
Department of Finance and Administration
State Capitol
Nashville, TN 37243

REF: 337.07-091 Non Competitive Contract

Dear Mr. Goetz:

Outlined below is our justification for a Non Competitive Contract with ACT, Inc.:

- 1) ACT, Inc. provides a computer based WorkKeys screening tests that will standardize the testing process in all Local Workforce Investment Act Areas (LWIA's). Currently the LWIA's use several different methods to test clients. The WorkKeys screening test will assure that all testing is being done using the national standards.
- 2) OIR approval is attached.
- 3) Department of Personnel approval not required.
- 4) Act, Inc. is an independent, not-for-profit organization that provides more than a hundred assessments, research, information, and program management services in the broad areas of education and workforce development. The proposed Contractor provided this type of service to the agency three years ago and the agency was pleased with the service provided.

We believe it will be more economical and in the best interest of the state to use a prime contractor rather than a contractor that would need to sub-contract with ACT, Inc. to provide the required services.

Based on the above justification, I am requesting your approval of this non-competitive contract.

Sincerely,


James G. Neeley, Commissioner
JGN: HS: mho

RECEIVED

AUG 23 2007

FISCAL REVIEW

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #	337.07-091-08	
2) State Agency Name :	Labor and Workforce Development	
3) Service Caption :	Computer-based WorkKeys® screening tests and Work Keys Assessments.	
4) Proposed Contractor :	ACT, Inc.	
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	10/15/07	
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	10/04/10	
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	601,500.00	
8) Approval Criteria : (select one)	<input type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input checked="" type="checkbox"/> only one uniquely qualified service provider able to provide the service	
9) Description of Service to be Acquired :	<p>The agency will acquire Computer based software WorkKeys® screening tests to be used as a diagnostic tool for entry into the Career Readiness Certificate program. The Work Keys Assessments will be used as the posttest for awarding of the certificates</p>	
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :	<p>The Computer based WorkKeys® screening tests will standardize the testing process in all Local Workforce Investment Areas (LWIA'S). Currently the LWIA'S use several different methods to test clients. The WorkKeys® screening tests will assure that all testing is being done using the national standards.</p>	
11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :	<p>The agency has purchased services from this vendor on non-competitive bases in 2004.</p>	
12) Name & Address of the Proposed Contractor's Principal Owner(s) : (<u>not</u> required if proposed contractor is a state education institution)	<p>ACT, Inc., 500 Act Drive, P.O. Box 168, Iowa City , Iowa</p>	
13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :	<p>ACT, Inc. is an independent, not-for-profit organization that provides more than a hundred assessment, research, information, and program management services in the broad areas of education and workforce development. Act, Inc. was organized in 1959. The</p>	

proposed contractor provided this type service to the agency for three years and the agency was pleased with the service provided.

14) Documentation of Office for Information Resources Endorsement :
(required only if the subject service involves information technology)

select one:

☐

Documentation Not Applicable to this Request

☒

Documentation Attached to this Request

15) Documentation of Department of Personnel Endorsement :
(required only if the subject service involves training for state employees)

select one:

☒

Documentation Not Applicable to this Request

☐

Documentation Attached to this Request

16) Documentation of State Architect Endorsement :
(required only if the subject service involves construction or real property related services)

select one:

☒

Documentation Not Applicable to this Request

☐

Documentation Attached to this Request

17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

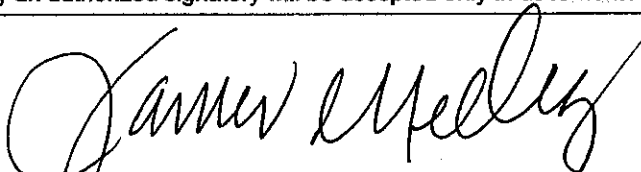
None.

18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

In 2006 the agency issued an RFP to validate and quantify the employability of skills of workers. All bidders responding to the RFP used the ACT, Inc. Work Keys screening. Based on our prior experience with contracting for this type of service, we have determined it would be cost effective and efficient to contract directly with the contractor rather than go through a third party for this service.

REQUESTING AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)



14 Aug 07

Agency Head Signature

Date

**FAX TRANSMITTAL****to Request OIR Procurement Endorsement****TO :** Jane Chittenden, Director
OIR Procurement & Contract Management **FAX # 741-6164****FROM :** Melvin O'Neal, Coordinator *MO* **FAX # 741-3002****DATE :** 8/08/07**TDLWD
RECEIVED****RFS #** 337.07-091-08**AUG 16 2007****RE :** Procurement Endorsement — ACT, Inc. Testing software **TECHNICAL SERVICES
NASHVILLE, TN****NUMBER OF FAX PAGES (including cover) : 2**

The nature and scope of service detailed in the attached service procurement document(s) appears to require Office for Information Resources (OIR) review and support, because the procurement involves information technology or information systems services.

This communication seeks to ensure that OIR is aware of the procurement and has an opportunity to review the matter. Please determine whether OIR is supportive of the procurement. If you have any questions or concerns about this matter, please call Melvin O'Neal at 532-1071.

Please indicate below your response to this proposed procurement, and return this communication at your earliest convenience (note the return FAX number above).

Thank you for your help.

Attachment(s) 1

OIR Endorsement :*Mark Bengel (gc)**8/16/07***OIR Chief Information Officer****Date**

CONTRACT SUMMARY SHEET

070407

RFS #				Contract #			
337.07-091-08							
State Agency				State Agency Division			
Labor and Workforce Development				Employment and Workforce Development			
Contractor Name				Contractor ID # (FEIN or SSN)			
ACT, Inc.				C- or <input checked="" type="checkbox"/> V- 42084148500			
Service Description							
Provide WorkKeys software, screening tests and score reports for assessments.							
Contract BEGIN Date		Contract END Date		Subrecipient or Vendor?		CFDA #	
10/15/2007		10/14/2010					
Mark each TRUE Statement							
<input checked="" type="checkbox"/> Contractor is on STARS				<input type="checkbox"/> Contractor's Form W-9 is on file in Accounts			
Allotment Code		Cost Center		Object Code		Fund	
337.07		PRG		083		11	
Funding Grant Code		Funding Subgrant Code					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount		
08		\$ 200,500.00			\$ 200,500.00		
09		\$ 200,500.00			\$ 200,500.00		
10		\$ 200,500.00			\$ 200,500.00		
					\$ -		
					\$ -		
					\$ -		
TOTAL	\$ -	\$ 601,500.00	\$ -	\$ -	\$ 601,500.00		
— COMPLETE FOR AMENDMENTS ONLY —							
FY				State Agency Fiscal Contact & Telephone #			
				Melvin O'Neal 532-1071			
Base Contract & Prior Amendments				State Agency Budget Officer Approval			
THIS Amendment ONLY							
TOTAL							
\$ -				\$ -			
End Date							
Contractor Ownership (complete only for base contracts with contract # prefix FA or GR)							
<input type="checkbox"/> African American		<input type="checkbox"/> Person w/ Disability		<input type="checkbox"/> Hispanic		<input type="checkbox"/> Small Business	
<input type="checkbox"/> Asian		<input type="checkbox"/> Female		<input type="checkbox"/> Native American		<input checked="" type="checkbox"/> NOT Minority/Disadvantaged	
Contractor Selection Method (complete for ALL base contracts— N/A to amendments or delegated authorities)							
<input type="checkbox"/> RFP		<input type="checkbox"/> Competitive Negotiation*		<input type="checkbox"/> Alternative Competitive Method*			
<input checked="" type="checkbox"/> Non-Competitive Negotiation*		<input type="checkbox"/> Negotiation w/ Government (ID,GG,GU)					
Procurement Process Summary (complete for Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method)							

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
AND
ACT, INC.**

This Contract, by and between the State of Tennessee, Department of Labor and Workforce Development, hereinafter referred to as the "State" and Act, Inc., hereinafter referred to as the "Contractor," is for the provision of providing computer based WorkKeys® screening test, as further defined in the "SCOPE OF SERVICES."

The Contractor is a non-profit corporation.

Contractor Federal Employer Identification or Social Security Number: 420841485

Contractor Place of Incorporation or Organization: Iowa.

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. Purpose: Computer-based WorkKeys® screening test will be used as the diagnostic tool for entry into the Career Readiness Certificate Program. The WorkKeys Assessments will be used as the posttest for awarding of the certificate.
- A.3. The Contractor will provide the following services and software to the States Local Workforce Investment Area's (LWIA's);
 - a. Install WorkKeys software in all 13 LWIA's.
 - b. Provide an unlimited use site license for each site for the use of the WorkKeys related career exploration software.
 - c. Provide scoring for all 13 LWIA's.
 - d. Provide Technical support, implementation services and training for all 13 LWIA's.
 - e. Provide WorkKeys screening tests for LWIA clients
 - f. Provide WorkKeys Assessments for LWIA clients
 - g. Provide scoring and score reports for the assessments
 - h. Provide WorkKeys training for each of the 13 LWIA's
 - i. Provide a series of statewide best practices workshops.

B. CONTRACT TERM:

This Contract shall be effective for the period commencing on 10/15/2007 and ending on 10/14/10. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed six hundred one thousand five hundred dollars (\$601,500.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability

represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount
Software installation and Technical Support	\$ 100.00 Each
Applied Math Assessments	\$ 4.00 Each
Reading for Information Assessments	\$ 4.00 Each
Locating Information Assessments	\$4.00 Each

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

- a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Department of Labor and Workforce,
Employment and Workforce Development
710 James Robertson Parkway, 1st Floor
Nashville, TN 37243-0655

- b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- (1) Invoice/Reference Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Invoice Period (period to which all invoiced charges are applicable);
- (4) Contract Number (assigned by the State to this Contract);
- (5) Account Name: Department of Labor and Workforce, Employment and Workforce Development;

- (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
 - (7) Contractor Name;
 - (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
 - (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
 - (10) Contractor Remittance Address;
 - (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
 - iv. Amount Due by Service; and
 - v. Total Amount Due for the invoice period.
- c. The Contractor understands and agrees that an invoice to the State under this Contract shall:
- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) not include any future work but will only be submitted for completed service; and
 - (3) not include sales tax or shipping charges.
- d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.
- e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.
- C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, hereto, semi-annually during the period of this

Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.

- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed

or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, natural disasters, riots, wars, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Melvin O'Neal, RFS Coordinator
Department of Labor and Workforce Development
710 James Robertson Parkway, 8th Floor, Andrew Johnson Tower
Nashville, TN 37243-0655
Melvin.o'neal@state.tn.us

Telephone # 615 532-1071
FAX # 615 741-3002

The Contractor:

NAME & TITLE OF CONTRACTOR CONTACT PERSON

ACT, Inc.
500 ACT Drive
P.O. Box 168
Iowa City, Iowa 52243-0168
WWW.act.org
Telephone # 319 337-1000
FAX # NUMBER

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or

inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.6. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals

IN WITNESS WHEREOF:

ACT, Inc.:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT:

James G. Neeley, Commissioner

DATE

APPROVED:

**M. D. GOETZ, JR., COMMISSIONER
DEPARTMENT OF FINANCE AND ADMINISTRATION**

DATE

**DEBORAH E. STORY, COMMISSIONER
DEPARTMENT OF HUMAN RESOURCES**

DATE

JOHN G. MORGAN, COMPTROLLER OF THE TREASURY

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

SIGNATURE & DATE:

NOTICE: This attestation **MUST** be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.